

## **Bankruptcy Petition Preparers**

### **I. Laws Governing Bankruptcy Petition Preparers**

Several statutes regulate the practice of bankruptcy petition preparers and debt relief agencies. A bankruptcy petition preparer is required to disclose his existence and participation in a bankruptcy case.

#### **A. Section 110 of the Bankruptcy Code - Penalty for persons who negligently or fraudulently prepare bankruptcy petitions**

(a) In this section—

(1) “bankruptcy petition preparer” means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and

(2) “document for filing” means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address. If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the bankruptcy petition preparer shall be required to—

(A) sign the document for filing; and

(B) print on the document the name and address of that officer, principal, responsible person, or partner.

(2)(A) Before preparing any document for filing or accepting any fees from or on behalf of a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure.

(B) The notice under subparagraph (A)—

- (i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;
- (ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and
- (iii) shall—
  - (I) be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and
  - (II) be filed with any document for filing.

(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document.

(2)(A) Subject to subparagraph (B), for purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.

(d) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

(e)(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

(B) The legal advice referred to in subparagraph (A) includes advising the debtor—

- (i) whether—
  - (I) to file a petition under this title; or
  - (II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;

- (ii) whether the debtor's debts will be discharged in a case under this title;
- (iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;
- (iv) concerning—
  - (I) the tax consequences of a case brought under this title; or
  - (II) the dischargeability of tax claims;
- (v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
- (vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or
- (vii) concerning bankruptcy procedures and rights.

(f) A bankruptcy petition preparer shall not use the word “legal” or any similar term in any advertisements, or advertise under any category that includes the word “legal” or any similar term.

(g) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

(h)(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for the debtor or accepting any fee from or on behalf of the debtor.

(2) A declaration under penalty of perjury by the bankruptcy petition preparer shall be filed together with the petition, disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).

(3)(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2)—

- (i) found to be in excess of the value of any services rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition; or
- (ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

(C) An individual may exempt any funds recovered under this paragraph under section 522(b).

(4) The debtor, the trustee, a creditor, the United States trustee (or the bankruptcy administrator, if any) or the court, on the initiative of the court, may file a motion for an order under paragraph (3).

(5) A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor—

(A) the debtor's actual damages;

(B) the greater of—

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys' fees and costs incurred.

(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2)(A) In an action under paragraph (1), if the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title;

(II) misrepresented the preparer's experience or education as a bankruptcy petition preparer; or

(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, has not paid a penalty imposed under this section, or failed to disgorge all fees ordered by the court the court may enjoin the person from acting as a bankruptcy petition preparer.

(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, or the United States trustee (or the bankruptcy administrator, if any).

(4) The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable attorneys' fees and costs of the action, to be paid by the bankruptcy petition preparer.

(k) Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than \$500 for each such failure.

(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer—

(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

(B) advised the debtor to use a false Social Security account number;

(C) failed to inform the debtor that the debtor was filing for relief under this title; or

(D) prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

(3) A debtor, trustee, creditor, or United States trustee (or the bankruptcy administrator, if any) may file a motion for an order imposing a fine on the bankruptcy petition preparer for any violation of this section.

(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustees, who shall deposit an amount equal to such fines in the United States Trustee Fund.

(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.

**B. Section 526 of the Bankruptcy Code. Restrictions on debt relief agencies**

(a) A debt relief agency shall not—

(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue or misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

(A) the services that such agency will provide to such person; or

(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer a fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—

(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

- (A) may bring an action to enjoin such violation;
- (B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and
- (C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.

(4) The district courts of the United States for districts located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

- (A) enjoin the violation of such section; or
- (B) impose an appropriate civil penalty against such person.

(d) No provision of this section, section 527, or section 528 shall—

(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

(2) be deemed to limit or curtail the authority or ability—

- (A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or
- (B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.



## II. How the Code Sections Work

A. Practical Application of 11 U.S.C. § 110. Pursuant to the Bankruptcy Code, a bankruptcy petition preparer must:

- \* sign every document he or she prepares for filing (11 U.S.C. § 110(b)(1));
- \* print his or her name and address on every document he or she prepares for filing (11 U.S.C. § 110(b)(1));
- \* place his or her social security number on every document he or she prepares for filing (11 U.S.C. § 110(c)(1));
- \* file a written notice, on the official form prescribed by the Judicial Conference of the United States, informing the debtor that the bankruptcy petition preparer is not an attorney and may not practice law or give legal advice (the “Form 19”) (11 U.S.C. § 110(b)(2)); and
- \* file, along with the petition, a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within the 12 months preceding the filing of the case as well as any unpaid fee charged to the debtor (the “Form 280”) (11 U.S.C. § 110(h)(2));

B. Prohibition of Executing Documents on Behalf of the Debtor: In addition, the Bankruptcy Code prohibits bankruptcy petition preparers from executing any document on behalf of the debtor.

C. Fines: Section 110(l)(1) provides that “a bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g) or (h) may be fined not more than \$500 for each such failure.” Furthermore, § 110(l)(2)(D) provides that the Court shall triple that fine in any case where the bankruptcy petition preparer “prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

D. Practical Application of § 526

1. “Debt relief agency” is defined in § 101(12A) of the Code to mean “any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110.”
2. Section 101(3) of the Code defines the term “assisted person” to mean “any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$175,750.”
3. A bankruptcy petition preparer can be a “debt relief agency” and if the debtor is an “assisted person,” the preparer is subject to the additional rules and potential sanctions contained in §§ 526-528.
4. If the preparer is found to have “intentionally or negligently” violated any provision of §§ 526, 527 or 528, the preparer is liable for any fees or charges in connection with the bankruptcy assistance, actual damages and for reasonable attorney’s fees and costs.

D. Unauthorized Practice of Law:

The inclusion of § 110 in the bankruptcy code does not permit the unauthorized practice of law. Section 110(e)(2)(A) specifically provides that, “[a] bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice.” Similarly, § 110(k) provides “[n]othing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.” In determining whether an action constitutes the practice of law, federal courts look

to state law. *In re Reynoso*, 477 F.3d 1117, 1125 (9th Cir. 2007); *Lucas v. Nickens*, (*In re Lucas*), 312 B.R. 559, 574-75 (Bankr. D. Md. 2004).

Advising a debtor regarding which documents to file with a court and/or the completion of bankruptcy petition, schedules, and statements constitutes the unauthorized practice of law. *In re Evans*, 413 B.R. 315, 325-27 (Bankr. E.D.Va. 2009). As Judge Mitchell for the Bankruptcy Court for the Eastern District of Virginia has stated:

When determining whether conduct constitutes the unauthorized practice of law, the court looks to state law. *Lucas v. Nickens, et al. (In re Lucas)*, 312 B.R. 559, 574 (Bankr. D. Md. 2004) (citing more than 10 cases holding the same). In Virginia, one is considered to be practicing law when "he furnishes another advice or service under circumstances which imply his possession and use of legal knowledge or skill." *Commonwealth v. Jones & Robins, Inc.*, 186 Va. 30, 34, 41 S.E.2d 720, 723 (1947).

Specifically, the practice of law occurs whenever:

- (1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.
- (2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.
- (3) One undertakes, with or without compensation, to represent the interest of another before any tribunal.

*Id.* at 33-34. In addition, "[a] nonlawyer giving assistance to the general public in the completion of forms . . . or rendering legal advice concerning the completion of these forms constitutes the unauthorized practice of law." *In re Soulisak*, 227 B.R. 77, 80 (Bankr. E.D. Va. 1998). *In re Evans*, 413 B.R. at 325 (emphasis added).

A bankruptcy petition preparer is prohibited from giving any legal advice. 11 U.S.C. § 110(e)(2). The only services which a bankruptcy petition preparer may provide are those that could be provided by a scrivener. A preparer is specifically prohibited from advising debtors on which forms to complete and how to correctly complete them.

Judge Clark of the Bankruptcy Court for the Western District of Texas aptly stated:

So what *does* § 110 tacitly permit? The answer in a nutshell is "not much." *Section 110* itself proscribes virtually all conduct falling into the category of guidance or advice, effectively restricting "petition preparers" to rendering only "scrivening/typing" services. Anything else--be it suggesting bankruptcy as an available remedy for a debtor's financial problems, merely explaining how to fill out the schedules, or answering questions about exemptions or whether a claim is or is not secured will invariably contravene either state laws proscribing the unauthorized practice of law or other more specific provisions of § 110. The only service that a bankruptcy petition preparer can safely offer and complete on behalf of a *pro se* debtor after the enactment of § 110 is the "transcription" of dictated or handwritten notes prepared by the debtor prior to the debtor having sought out the petition preparer's service. Any other service provided on behalf of the debtor by a non-attorney (even telling the debtor where the information goes on the form) is *not* permitted under state unauthorized practice of law

statutes, and so is also not authorized by § 110. *In re Gutierrez*, 248 B.R. 287, 297-98 (Bankr. W.D. Tex. 2000).

The District Court for the Middle District of North Carolina has described the services a bankruptcy petition preparer may properly offer as follows:

A bankruptcy petition preparer is only authorized to meet a prospective debtor, make the required disclosures, provide the required notices, provide blank bankruptcy forms for the debtor to complete without any assistance from the petition preparer, type the information on the applicable bankruptcy forms without change or alteration, copy the documents prepared for the prospective debtor, and deliver the original and at least one copy of the documents to the prospective debtor. *In re Langford*, 2005 Bankr. LEXIS 3201, 2007 WL 3376664, at \*13 (M.D.N.C. 2007).

Courts in Virginia have agreed that bankruptcy petition preparers may only offer scrivener services and may not advise debtors in any respect. *See In re Jay*, 446 B.R. 227, (Bankr. E.D. Va. 2010) (quoting *In re Gutierrez*, 248 at 297-98, and *In re Langford*, 2005 Bankr. LEXIS 3201); *In re Evans*, 413 B.R. 315, 328-29 (Bankr. E.D.Va. 2009) (discussing multiple cases concerning the scope of services a bankruptcy petition prepare may offer); *In re Gross*, 2009 Bankr. LEXIS 2761 \* 14-23 (Bankr. E.D.Va. 2009).

### III. Some Examples of what NOT to do

#### A. Sabrena Karim

##### 1. Factual Background:

(a) Non-disclosure: Ms. Karim began acting as a bankruptcy petition preparer in 2001. She is not an attorney, does not have law a degree and is not admitted to practice law in any jurisdiction. Ms. Karim believes that she has prepared approximately 2,000 voluntary petitions in bankruptcy for her clients. She testified that from 2001 to 2008 she was unaware of the disclosure requirements imposed upon bankruptcy petition preparers.

(b) Disclosure: Once Ms. Karim began disclosing her involvement, the chapter 7 Trustees and the United States Trustee began to inquire about the involvement.

(c) Sometimes Disclosure: Allegedly because Ms. Karim believed her clients should not be subjected to such questioning, she decided to disregard her disclosure obligations. Ms. Karim's explanation was that "[she] decided to put those trouble People [sic] interest first and the Law second." Thereafter, Ms. Karim filed approximately 40 cases in which she concealed her involvement from the Court, the United States Trustee and the Chapter 7 and 13 Trustees. While ultimately Ms. Karim decided to abandon her practice of wholesale non-disclosure, her disclosures were not consistently made.

2. Activities: Ms. Karim's activities as a bankruptcy petition preparer far exceeded the mere petition preparation and constituted the unauthorized practice of law. As the United States Bankruptcy Court for the District of Maryland described it "Ms. Karim essentially became the neighborhood petition preparer *cum* bankruptcy advisor that numerous unrepresented debtors would employ for assistance

with their cases.” As Ms. Karim herself explained in response to a show cause order issued by this Court:

I am very often called and asked for direction on how to file Bankruptcy. These mostly African American Clients cannot afford a Lawyer and God has given me some knowledge I feel it is my duty to share and help as much as possible. In the Chapter 13 Case, Layer [sic] want \$2,500 to \$4,500 dollars. This means that they are [face] with filing fees, Layer [sic] fees, Chapter 13 Plan payments, Mortgage Payments and normal living cost [sic]. I think comparing these cost [sic] that \$300 should not be consider [sic] a fee, but a stiffen [sic]...As we all know Chapter 13 Cases can last 3 to 5 never the less [sic] I keep in contact with all applicant [sic] that need my assistance and I have continue [sic] to assist whenever I can.

3. Permanent Injunction:

On March 31, 2011, the United States Bankruptcy Court for the District of Maryland:

(A) Imposed a \$130,000 fine on Ms. Karim

(B) Permanently enjoined from acting as a bankruptcy petition preparer

4. Civil Contempt: On October 24, 2011, Ms. Karim was held in civil contempt for her knowing and intentional violations of the Court’s March 31, 2011 Order.

5. Criminal Contempt: On January 28, 2014, Ms. Karim was arrested and charged with criminal contempt for her repeated violations of the injunction previously issued by the United States Bankruptcy Court.

(a) On June 23, 2013, an FBI agent contacted Ms. Karim on her cell phone and advised her that the Bankruptcy Court had correspondence for her.

(b) On June 24, 2013, the FBI agent served Ms. Karim with the order permanently enjoining her from acting as a bankruptcy petition preparer, the Findings of Fact and Conclusions of Law Pursuant to Rule 7052 and Order Finding Ms. Karim in Civil Contempt. Ms. Karim's response was that "it's all lies." The agent advised her that the Court's Orders prohibited from engaging in those activities and that she needed to seek relief from the Court if she disagreed with the Orders. Ms. Karim responded "ok."

(c) Ms. Karim continued to act as a bankruptcy petition preparer after June 24, 2013. However, she took some measures to cloak her ongoing activities.

(d) On December 20, 2013, the FBI agent interviewed Ms. Karim again. During the interview, Ms. Karim stated that she prepared the documents as a "community service." Furthermore, Ms. Karim advised that agent that she was prohibited by the Court's order from engaging in the activities. Ms. Karim claimed that she believed she was in "civil contempt" of the Court, but that she did not care, because she had no assets that the Court could garnish.

(f) After the December 20, 2013 interview, additional documents that appeared to have been filed by Ms. Karim were filed with the Court.

(g) Ms. Karim was arrested and charged with criminal contempt of Court on January 28, 2014.



B. Antonia Diaz, Nicole Diaz, Saving Homes, Inc. and Bankcredit Mortgage, USA

1. Factual Background: On June 19, 2012, *pro se* debtor, Hans Falck filed a voluntary chapter 13 petition. On the same day, a declaration and signature of non-attorney bankruptcy petition preparer Nicole M. Diaz was filed by the debtor which contained the signature of both the debtor and the preparer. The disclosure of compensation reported that zero dollars had been accepted, zero dollars were received and zero dollars were due from the debtor to the preparer. The declaration was signed by Ms. Diaz.

On July 25, 2012, the case was dismissed for the debtor's failure to pay the filing fee.

On August 30, 2012, the debtor filed a motion to reopen the case and a motion to vacate the dismissal. A hearing was held on the motion. During the hearing, the debtor testified that he had paid significant funds (several thousand dollars) to "Saving Homes, Inc." and specifically to a Mr. Antonio Diaz. At the conclusion of the hearing, the court directed Nicole M. Diaz and Antonio Diaz to (1) appear and explain what amounts were charged to and paid by Mr. Falck and (2) show cause why sanctions should not be imposed.

2. Show Cause: A few show cause orders later, on July 1, 2013, Antonio Diaz and Nicole Diaz were ordered to turnover their final list of customers.

3. Let Me Work Motion: On November 21, 2013, Antonio Diaz filed his "Motion to the Honorable Judge John K. Olson to let me work as a Bankruptcy Petition Preparer for the following reasons." His reasons were that (1) he "would not do the same mistakes that I did" when working for two different lawyers and (2) he could "help a lot of people in the community." The United States Trustee objected to the motion.

4. ORDER IMPOSING SANCTIONS, PENALTIES, AND AN INJUNCTION AGAINST ANTONIO DIAZ, NICOLE DIAZ, SAVING HOMES, INC. AND BANKCREDIT MORTGAGE, USA PURSUANT TO ORDER TO SHOW CAUSE.

Findings:

- (a) The debtor, Mr. Falck, had paid more than \$7,000 to Saving Homes, Inc. and Antonio Diaz.
- (b) The fourteen page customer list filed by the defendants identified hundreds of clients and case files handled by the defendants in the last three years. That in each and every case reviewed by the court, the violation of § 110 were pervasive.
- (c) How the debtor found the defendants. The debtor was unable to remain current on his mortgage payments and foreclosure proceedings were initiated against him in June 2010. Shortly after foreclosure proceedings were begun, the debtor received an advertisement in the mail from the defendants. After meeting with the defendants, the debtor proceeded to make monthly payments to them for “mortgage foreclosure defense.” The Court described the debtor as “a working man, not well educated and utterly unsophisticated in legal and financial matters” and “easy prey.” After two years of making regular monthly payments totaling \$7600 to the defendants, the defendants recommended that Mr. Falck file bankruptcy.
- (d) The Court rejected the defendants’ argument that filing bankruptcies was not the end plan of their business practices. The Court found the argument to be false and misleading in that bankruptcy petitions were always an arrow in the Defendants’ quiver of “services.”
- (e) The defendants were “remarkably successful” in hiding their illegal business practices from the Courts.
- (f) For violations of 11 U.S.C. §§ 110(b), (d), (e) and (g), the defendants were ordered to pay the United States Trustee fines in the amount of \$5,000.

For violations of §§ 110 (b), (d), (e) and (g), the defendants were ordered to pay \$7,600 to the standing chapter 13 trustee.

For violations of § 110 and for engaging in fraudulent, unfair and deceptive practices, the defendants were ordered to pay to the debtor statutory sanctions of \$15,200.

And, the court entered a permanent injunction against Antonio Diaz, Nicole Diaz, Savings Homes, Inc. and BankCreditMortgage USA from preparing or assisting in the preparation of bankruptcy petition or any documents prepared in connection with a bankruptcy case in any district in the United States.

C. Mark Jennings and/or Financial Associates Enterprise Marketing, Inc.

1. Factual Background: The debtor, Jane Brown filed three bankruptcy cases in a year and a half period. In all of the cases, the debtor failed to schedules and statements and to pay the filing fees. In response to this history, a Motion for Sanctions filed by United States Trustee and a Motion to Dismiss Case with Prejudice filed by Chapter 13 trustee.

2. Hearing on Motion for Sanctions:

At the first hearing on the United States Trustee's motion, Mr. Jennings did appear and identified himself to be the debtor's "asset manager" and advised the Court that Ms. Brown was ill and requested a continuance.

On May 28, 2013, the hearing on the various motions was held. The debtor testified that she filed bankruptcy at Mr. Jennings' suggestion and with his assistance. After the debtor had testified, Mr. Jennings who was late for the hearing arrived. In response to questioning by Judge Stone, Mr. Jennings testified that the "services" provided by him and his company were as follows:

Mr. Jennings: What I would like to do is elaborate on our services to help clear his concerns and that would probably give us a direction where if he feels he thinks he needs to pursue, then we can go there, but what we do is educate our clients of their rights. Like I say, I'm

not an attorney, but you can file this stuff on your own. Okay? We basically educate them on everything they could possibly do when it comes to financial work. That's what we do. And we have ways of actually putting a program together to help them out of their financial problems, that's what we do. In this situation, the bank actually left her no choice because they have screwed up several times which I can prove on her case.

At the conclusion of the May 28, 2013 hearing, both the United States Trustee and the Chapter 13 trustee requested a continuance to allow time for a motion to be filed against Mr. Jennings and Financial Associates Enterprise Marketing, Inc.

3. Motion for Review

After discovery was conducted and through multiple continuances requested by Mr. Jennings, the final hearing was held on December 30, 2013.

4. Court's Decision:

In the Court's decision, Mr. Jennings and his business were in a very limited fashion both a "bankruptcy petition preparer" and a "debt relief agency." Also, in a very limited fashion, that he had given legal advice to the debtor for which his wholly owned corporation was compensated. The Court also believed that it was unclear that Mr. Jennings realized that filing a bankruptcy petition for the purpose of preventing a foreclosure without the intent of actually proceeding with a case so initiated is deemed to be an abuse of the bankruptcy system.

Mr. Jennings and his company were ordered to pay a \$1500 fine to the United State Trustee and ordered to pay statutory damages of \$2,000 to the debtor (who was pleased with his services).